



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

CARPENTERS SOUTHWEST  
ADMINISTRATIVE CORPORATION, a  
California non-profit ; and  
BOARD OF TRUSTEES FOR THE  
CARPENTERS SOUTHWEST TRUSTS,

Plaintiffs,

v.

R. M. FISHER CONSTRUCTION, INC.,  
a California corporation; RAY M. FISHER  
JR., also known as RAY MERRITT  
FISHER, JR., individually and doing  
business as R. M. FISHER  
CONSTRUCTION, INC. and as FISHER  
CONSTRUCTION; JEANETTE B.  
FISHER, individually and doing business  
as R. M. FISHER CONSTRUCTION,  
INC.; and PLATTE RIVER INSURANCE  
COMPANY, a Nebraska corporation,

Defendants.

CASE NO. CV 10-2837 CBM(Ex)

**STATEMENT OF FACTS AND  
CONCLUSIONS OF LAW**

1 The matter before the Court is Plaintiffs' Motion for Summary Judgment.  
2 [Docket No. 38]. The Court, having read all of the papers and evidence in support  
3 of Plaintiffs, CARPENTERS SOUTHWEST ADMINISTRATIVE  
4 CORPORATION and BOARD OF TRUSTEES, (collectively "CARPENTERS  
5 TRUSTS") Motion for Summary Judgment, hereby makes the following findings:

6 **FACTS**

7 1. CARPENTERS SOUTHWEST ADMINISTRATIVE  
8 CORPORATION, ("CSAC") is a non-profit corporation duly organized and  
9 existing under and by virtue of the laws of the State of California.

10 2. At all times herein mentioned, BOARD OF TRUSTEES was and now  
11 is a fiduciary and is a duly authorized and acting trustee of the various Carpenter  
12 Trust Funds.

13 3. At all times herein mentioned, Southwest Carpenters Health and  
14 Welfare Trust, Southwest Carpenters Pension Trust, Southwest Carpenters  
15 Vacation Trust, and Southwest Carpenters Training Fund were, and now are,  
16 multiemployer plans within the meaning of ERISA.

17 4. The Construction Industry Advancement Fund of Southern  
18 California, the Residential Housing Contract Administration Trust Fund, the  
19 Contractors-Carpenters Grievance and Arbitration Trust and the Contract  
20 Administration Trust for Carpenter- Management Relations, are express trusts,  
21 were and are express trusts within the meaning of ERISA.

22 5. The Carpenters-Contractors Cooperation Committee, the Southern  
23 California Drywall Industry Fund and the California Drywall/Lathing Industry  
24 Labor-Management Cooperation Committee were and are non-profit California  
25 corporations which exists pursuant to section 5(b) of the Labor Management  
26 Cooperation Act of 1978, 92 Stat. 2020 (1978), for the purposes set forth in  
27 section 302(c)(9) of LMRA, 29 U.S.C. § 186(c)(9).

28 6. At all times herein mentioned, CSAC was, and now is, the

1 administrator of Southwest Carpenters Health and Welfare Trust, Southwest  
2 Carpenters Pension Trust, Southwest Carpenters Vacation Trust, and Southwest  
3 Carpenters Training Fund, and assignee of the Construction Industry  
4 Advancement Fund of Southern California, the Residential Housing Contract  
5 Administration Trust Fund, the Contractors-Carpenters Grievance and Arbitration  
6 Trust, the Contract Administration Trust for Carpenter- Management Relations,  
7 and the Carpenters-Contractors Cooperation Committee, the Southern California  
8 Drywall Industry Fund, the California Drywall/Lathing Industry Labor-  
9 Management Cooperation Committee, Inc. and the Grievance Obligation Trust  
10 Fund (collectively, the "PLANS"), and as such is a plan fiduciary within the  
11 meaning of ERISA.

12         7. The duly authorized and acting trustees or directors of each of the  
13 PLANS have assigned to CSAC all their right, title and interest as to the amounts  
14 due as alleged in the complaint and this motion.

15         8. At all times herein mentioned, the Southwest Regional Council of  
16 Carpenters and its affiliated local unions ("UNIONS") affiliated with United  
17 Brotherhood of Carpenters and Joiners of America, are labor organizations that are  
18 a party to the collective bargaining agreements involved.

19         9. R. M. FISHER CONSTRUCTION, INC., a California corporation,  
20 was suspended as a corporation on September 1, 1993 by the Franchise Tax  
21 Board.

22         10. R.M. FISHER CONSTRUCTION, INC. was a contractor engaged in  
23 the construction industry in Southern California, and conducted the construction  
24 business of the Fishers (the "FISHER BUSINESS").

25         11. Since the date of the suspension of R.M. FISHER CONSTRUCTION,  
26 INC., RAY M. FISHER, JR., also known as RAY MERRITT FISHER, JR.,  
27 individually and doing business as R. M. FISHER CONSTRUCTION, INC. and as  
28 FISHER CONSTRUCTION, JEANETTE B. FISHER, individually and doing

1 business as R. M. FISHER CONSTRUCTION, INC., (the "FISHER  
2 DEFENDANTS") continued to operate the FISHER BUSINESS either under the  
3 name "R.M. Fisher Construction, Inc." or "Fisher Construction," or both.

4 12. At all times herein mentioned, RAY M. FISHER, JR., also known as  
5 RAY MERRITT FISHER, JR., individually and doing business as R. M. FISHER  
6 CONSTRUCTION, INC. and as FISHER CONSTRUCTION was and is a  
7 contractor engaged in the construction industry in Southern California.

8 13. At all relevant times, R.M. FISHER CONSTRUCTION, INC. was  
9 bound to a written collective bargaining agreement with the UNIONS.

10 14. The Memorandum Agreement bound R.M. FISHER  
11 CONSTRUCTION, INC. to the terms and conditions of the Master Labor  
12 Agreement ("MLA") between the United General Contractors and the United  
13 Brotherhood of Carpenters and Joiners of America, and the Declarations of Trust  
14 establishing the Southwest Carpenters Health and Welfare Trust, the Southwest  
15 Carpenters Pension Trust, the Southwest Carpenters Vacation Trust, and the  
16 Southwest Carpenters Training Fund (collectively the "AGREEMENTS").

17 15. The AGREEMENTS obligate R.M. FISHER CONSTRUCTION,  
18 INC. to pay fringe benefit contributions at the rates set forth in the  
19 AGREEMENTS for every hour worked by employees performing services  
20 covered by the AGREEMENTS, and on account of all compensation paid to  
21 employees performing services covered by the AGREEMENTS.

22 16. The AGREEMENTS obligate R.M. FISHER CONSTRUCTION,  
23 INC. to make the fringe benefit contributions to the PLANS at their place of  
24 business, on or before the 25th day of each month following the month during  
25 which the hours for which contributions are due were worked or paid.

26 17. R.M. FISHER CONSTRUCTION, INC. and the FISHER  
27 DEFENDANTS employed workers who performed services covered by the  
28 AGREEMENTS during the term of the AGREEMENTS.

1        18. As provided for under the AGREEMENTS, audits of the books and  
2 records of R.M. FISHER CONSTRUCTION, INC., and the FISHER  
3 DEFENDANTS performed for the periods September 1, 2004 through June 30,  
4 2007, July 1, 2007 through August 30, 2009 and a check stub audit for the period  
5 September 12, 2008 through January 23, 2009, revealed that R.M. FISHER  
6 CONSTRUCTION, INC. and the FISHER DEFENDANTS had underreported the  
7 actual hours worked by its carpentry employees.

8        19. The AGREEMENTS provide that the R.M. FISHER  
9 CONSTRUCTION, INC. is to pay audit expenses if an audit indicates that R.M.  
10 FISHER CONSTRUCTION, INC. failed to report and pay all contributions.

11        20. After the suspension of R.M. FISHER CONSTRUCTION, INC. in  
12 1993, the FISHER DEFENDANTS, Ray and Jeanette Fisher, operated the  
13 FISHER BUSINESS and continued to be bound by the Agreements and paid  
14 contributions, and from time to time, interest and liquidated damages, to Plaintiffs  
15 as required by the Agreements.

16        21. After 1993, the Plaintiffs filed previous actions under the  
17 AGREEMENTS against the R.M FISHER CORPORATION, INC. and the  
18 FISHER DEFENDANTS, Ray and Jeanette Fisher. (*See* USDC CD #CV 96-8951  
19 CBM(JGx), USDC CD #CV 99-8891 CBM(MANx), USDC CD #CV 00-02419  
20 CAS(Ex), USDC CD #CV 02-6481 CBM(AJWx).) Those actions settled with  
21 payments made to Plaintiffs.

22        22. In USDC CD #CV 02-6481 CBM(AJWx), the FISHER  
23 DEFENDANTS, Ray Fisher and Jeanette Fisher, admitted, and the court found,  
24 that they were successors to R.M. FISHER CONSTRUCTION, INC.

25        23. Following the 2004 litigation, Plaintiffs continued to receive reports  
26 and contributions from the FISHER DEFENDANTS on behalf of their employees  
27 until June 2010. The FISHER DEFENDANTS have not reported to and have been  
28 inactive with CSAC since July 2010.

1           24. For the periods July 2008, December 2008, January 2009, April 2009  
2 through August 2009, February 2010 and March 2010, R.M. FISHER  
3 CONSTRUCTION, INC. and the FISHER DEFENDANTS submitted its monthly  
4 reports late and/or without payment for the fringe benefit contributions.

5           25. R.M. FISHER CONSTRUCTION, INC. and the FISHER  
6 DEFENDANTS have failed to pay the underreported fringe benefit contributions  
7 as required by the AGREEMENTS.

8           26. As a result of the failure to pay fringe benefit contributions, R.M.  
9 FISHER CONSTRUCTION, INC. and the FISHER DEFENDANTS are liable for  
10 interest on the unpaid contributions from the first of the month following the date  
11 due, at the rate prescribed by the AGREEMENTS.

12           27. The amount owed by R.M. FISHER CONSTRUCTION, INC. and the  
13 FISHER DEFENDANTS to the CARPENTERS TRUSTS, excluding reasonable  
14 attorneys fees and costs, is \$127,343.03.

15           28. CARPENTERS TRUSTS have been unable to recover the unpaid  
16 fringe benefit contributions from R.M. FISHER CONSTRUCTION, INC. and the  
17 FISHER DEFENDANTS.

### 18                                   **CONCLUSIONS OF LAW**

19           1. The facts, insofar as they may be conclusions of law, are hereby  
20 incorporated by reference.

21           2. The action arises and jurisdiction of the court is founded on section  
22 301 of the Labor-Management Relations Act of 1947 ("LMRA") (29 U.S.C.A.  
23 §185a) and section 502 of the Employee Retirement Income Security Act of 1974,  
24 as amended ("ERISA") (29 U.S.C.A. §1132).

25           3. The Southwest Carpenters Health and Welfare Trust, Southwest  
26 Carpenters Pension Trust, Southwest Carpenters Vacation Trust, and Southwest  
27 Carpenters Training Fund, were and are express trusts which exist pursuant to  
28 section 302 of the LMRA, 29 U.S.C. § 186, and multiemployer plans within the

1 meaning of section 3 of ERISA, 29 U.S.C. § 1002.

2 4. The Construction Industry Advancement Fund of Southern  
3 California, the Residential Housing Contract Administration Trust Fund, the  
4 Contractors-Carpenters Grievance and Arbitration Trust, and the Contract  
5 Administration Trust for Carpenter- Management Relations, were and are express  
6 trusts which exist pursuant to section 302 of the LMRA, 29 U.S.C. § 186.

7 5. The Carpenters-Contractors Cooperation Committee, the Southern  
8 California Drywall Industry Fund and the California Drywall/Lathing Industry  
9 Labor-Management Cooperation Committee were and are non-profit California  
10 corporations which exists pursuant to section 5(b) of the Labor Management  
11 Cooperation Act of 1978, 92 Stat. 2020 (1978), for the purposes set forth in  
12 section 302(c)(9) of LMRA, 29 U.S.C. § 186(c)(9).

13 6. R.M. FISHER CONSTRUCTION, INC. and FISHER  
14 DEFENDANTS are liable to CARPENTERS TRUSTS pursuant to Section 515 of  
15 ERISA (29 U.S.C. § 1145), as amended which provides "Every employer who is  
16 obligated to make contributions to a multiemployer plan under the terms of the  
17 plan or under the terms of a collectively bargained agreement shall, to the extent  
18 not inconsistent with law, make such contributions in accordance with the terms  
19 and conditions of such plan or such agreement".

20 7. R.M. FISHER CONSTRUCTION, INC. and FISHER  
21 DEFENDANTS are obligated to pay the unpaid fringe benefit contributions as  
22 required by the AGREEMENTS and interest at the rate of 7 percent on the  
23 delinquent sums.

24 8. As a result of the failure to pay fringe benefit contributions, R.M.  
25 FISHER CONSTRUCTION, INC. and FISHER DEFENDANTS are liable for an  
26 amount equal to the greater of interest on the unpaid contributions as prescribed by  
27 section 6621 of the Internal Revenue Code of 1954, 26 U.S.C.  
28 § 6621, or liquidated damages provided for under the AGREEMENTS.



1           9.     R.M. FISHER CONSTRUCTION, INC. and FISHER  
2 DEFENDANTS are liable for CARPENTERS TRUSTS' attorneys' fees and the  
3 costs pursuant to section 502(g)(2) of ERISA and pursuant to the AGREEMENTS  
4 as it has been necessary for CARPENTERS TRUSTS to engage counsel to bring  
5 this action to recover the delinquent contributions.

6           10.    R.M. FISHER CONSTRUCTION, INC. and FISHER  
7 DEFENDANTS are liable to CARPENTERS TRUSTS pursuant to section 502(a)  
8 of ERISA (29 U.S.C. §1132(a)) provides in part that "A civil action may be  
9 brought... (3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or  
10 practice which violates any provision of this title or the terms of the plan."

11           11.    FISHER DEFENDANTS are the successors in interest to R.M.  
12 FISHER CONSTRUCTION, INC., including its assets and liabilities, and have  
13 continued since 1993 to the present time operating the business formerly  
14 conducted by R.M. FISHER CONSTRUCTION, INC.

15  
16 **IT IS SO ORDERED.**

17 DATED: February 16, 2012

  
HONORABLE CONSUELO B. MARSHALL  
UNITED STATES DISTRICT JUDGE